

SRA BOARD**CLASSIFICATION – PUBLIC**

SOLICITORS REGULATION AUTHORITY
Minutes of the SRA Board meeting
held on 1 February 2022 at 12.30 at the Hilton London Tower Bridge, 5 More
London Riverside, Tooley St, London SE1 2BY

Present: Anna Bradley (Chair)
Ann Harrison
Paul Loft
Lisa Mayhew
Dermot Nolan
Vikas Shah
Liz Smart
Selina Ullah
Tony Williams

In attendance: Nicola Williams (Board observer), Paul Philip, Robert Loughlin,
Jane Malcolm, Juliet Oliver, Liz Rosser, Tracy Vegro, Julie,
Brannan, Chris Handford, Dominic Tambling

1 WELCOME AND APOLOGIES

1.1 The Chair welcomed Board members to the meeting. There were no apologies.

2 MINUTES OF THE PREVIOUS MEETINGS ON 7 DECEMBER 2021 and 19 JANUARY 2022

2.1 The minutes of the meetings held on 7 December 2021 and 19 January 2022 were approved as a true and accurate record. The Board ratified its decision made at the meeting on 19 January 2022, when it had not had a lay majority present, to withdraw our application for charitable registration.

3 MATTERS ARISING AND DECLARATIONS OF INTEREST

3.1 There were no matters arising that would not be covered elsewhere on the agenda. All actions due had been completed.

3.2 Interests were as previously declared and available to view on the SRA website. Members would declare any additional particular interest in an individual item if necessary.

4 CHAIR'S UPDATE

4.1 The Chair thanked Board members for their participation in the workshop discussions the previous evening and that morning. These had covered: an update on our review of our approach to continuing competence and proposals for a way forward; a discussion of the issues arising from our application for charitable registration and decision to withdraw; a look at the key themes for our

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communications work in the 2021/22 business year; an update on the scoping work undertaken to date on our proposed consultation on the publication of regulatory decisions; and an update on the current position in terms of our Investigation and Enforcement work.

- 4.2 The Chair thanked those members who had taken part in a Board to Board meeting with the Legal Services Board (LSB) on 13 December 2021. Topics discussed had included public legal education and continuing competence, and the Chair noted the need for us to continue to work closely with the LSB and support its work in an appropriate way.
- 4.3 The Chair also updated Board members on key points arising from the exit interviews she had held with the three Board members who had left the Board at the end of 2021. These included the need to continue to consider the balance of virtual and face to face meetings in order to support Board members in full time employment and to continue to ensure that the Board considered the equality, diversity and inclusion impacts of our work.
- 4.4 Finally, the Board reviewed the outcome of the first Solicitors Qualifying Examination which had taken place in November 2021. The Board noted that there had been no significant difference between the performance of candidates on a range of diversity characteristics but that there had been the anticipated and troubling difference in performance by ethnicity. We have appointed Exeter University to carry out research to better understand the underlying factors driving this attainment gap in legal and wider professional assessments, so that we could work with others to address the issues.

5 REVIEW OF THE STRATEGIC RISK REGISTER

- 5.1 The Board was asked to consider the strategic risks facing the SRA with a view to refreshing the current Strategic Risk Register (SRR). The Board reviewed the SRR on a quarterly basis as part of the performance pack and in September 2021, the Board had agreed that it would be timely to reconsider all risks on the SRR on a more fundamental basis. A workshop with Audit and Risk Committee (ARC) members, the Board Chair and Executive Risk owners had taken place in December 2021 to inform this discussion.
- 5.2 The Board discussed the proposed changes to the SRR and:
- a) agreed a rearticulation of (i) SRR1, to recognise that the Solicitors Qualifying Examination assessments were now underway, (ii) SRR2, to recognise the latest position on anti-money laundering, and (iii) SRR4, to better reflect the current position on equality, diversity and inclusion.
 - b) agreed to the removal of SRR3 relating to resources from the register, noting that this was monitored through the Mid-tier Risk Register (MRR), financial management and ICT governance

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- c) agreed to the rearticulation of SRR5 into two risks – around 1) legislative policy and 2) developments in the legal services market.
- 5.3 The Board also agreed that a further discussion of the revised Risk Appetite Statements should be scheduled.
- 5.4 The Board also discussed the MRR, which was regularly reviewed by the ARC, and agreed that the risk relating to investigation and enforcement work should be moved to the SRR. The Board also asked for a further discussion to inform its decisions about whether, and if so in what form, the risk on the MRR relating to cyber security might be moved to the SRR.
- 5.5 The Board also discussed the outputs from the Board's initial discussions on risk at the strategy session in October 2021 and the output from the Horizon Scanning Programme led by our Research and Analysis team. It agreed that there were no further risks which currently needed to be added to the MRR or SRR but discussed other areas for possible consideration including risks associated with solicitors leaving the profession and from the failure of third party service suppliers to the profession.

NB: This paper will not be published because it relates to emerging strategy or policy

6 NEXT STEPS FOR OUR WORK ON DIVERSITY IN THE PROFESSION

- 6.1 The Board was asked to consider our planned work to promote and support a diverse profession over 2022 and 2023.
- 6.2 The paper built on the Board's workshop discussion in July 2021 and a review in January of our latest firm diversity data, which was being published today. The paper proposed further work that we could do to make the difference that we wanted to see, noting that the Board had agreed that any actions we decided to take should be based on evidence
- 6.3 The main elements of the proposals were a sharp focus on working with large firms to improve diversity at senior levels; work to improve our data collection and analysis, including on intersectionality; evaluation of the impact that the Solicitors Qualifying Examination has on diversity over the long term and work with others on the outcomes of the major research we have commissioned into the attainment gap in legal and wider professional assessments.
- 6.4 It also proposed that we would look at doing more to encourage firms to report their ethnicity pay gap reporting. As part that we would explore publishing our own ethnicity pay gap data this year.
- 6.5 The Board discussed the proposals and in particular the publication of pay gap information. It was noted that the current legal requirement for organisations to publish gender pay gap information were limited and that the priority was to take forward work on exploring the idea of ethnicity pay gap reporting, perhaps starting with the SRA first.

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6.6 The Board:

- a) approved the proposed work programme, covering how we improve our data collection, work on access to the profession, a sharp focus on retention and progression in large firms and leading by example.
- b) noted the planned evaluation approach
- c) noted that we are also reviewing legacy projects to ensure resources are targeted where we can make the most difference.

7 PROPOSED RULE CHANGES ON HEALTH AND WELLBEING IN THE PROFESSION

- 7.1 The Board was asked to consider proposals for consultation on changes to our Standards and Regulations regarding (i) appropriate treatment of colleagues in the workplace, and (ii) our ability to address circumstances where a solicitor's health may affect their fitness to practise, including their ability to take part in disciplinary proceedings, in a fair and proportionate way.
- 7.2 The Board had considered themes arising from our disciplinary work at a workshop in July 2021 and agreed in principle to take forward work to develop consultation proposals on these issues.
- 7.3 The first proposal is to consult on an express obligation within both the Firm and Individual Codes of Conduct, placing a requirement on both regulated individuals and firms to treat colleagues fairly and with respect, creating an environment that is inclusive and free from discrimination, bullying and harassment. It was also proposed to consult on a requirement for firms and individuals to challenge behaviour which does not meet this standard, with the aim of fostering a collegiate approach and a culture in which poor behaviours are not tolerated.
- 7.4 This would underpin other ongoing work in this area, including new guidance and a thematic report – both due to be published shortly - intended to make our regulatory expectations clearer for firms, and to highlight the importance of systems and culture that ensure the safety of staff and the delivery of competent and ethical legal services. The Board was informed that we are currently able to take action where we see serious issues of concern, but are required to rely on general standards or Principles, for example relating to acting with integrity and maintaining public confidence. The proposed rule changes would introduce explicit standards, making clear and certain our approach and commitment to this issue, and bringing us into line with the approach taken by a number of other regulators.
- 7.5 In response to questions from Board members, it was confirmed that we would not, through this rule, seek to direct working practices as a matter of course but that this would allow us to address, for example, circumstances where workloads were oppressive and wholly unrealistic.

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- 7.6 The second area for consultation related to solicitors' health and fitness to practise, to address the number of cases in which the respondent solicitor has health issues that affect their ability to practise safely, or to participate in disciplinary proceedings to address concerns about their practice. This creates risk to their clients and to the public interest.
- 7.7 We are proposing to consult on provisions that make it explicit in our rules, for the avoidance of doubt, that we are able to take this into account on admission – as part of the assessment of suitability to practise as a solicitor - and in considering whether to renew a practicing certificate or impose conditions on a practicing certificate.
- 7.8 We would only become involved where there was clear medical evidence of a potential risk to the public, and any action we took would be aimed at protecting clients and the public and would go no further than was required to do so. This would underpin work we have done reviewing and updating our disciplinary processes to ensure that health issues are explored as early as possible and that these are handled by staff with appropriate training and experience and resolved in a proportionate way through the use of conditions and agreed resolutions (Regulatory Settlement Agreements) wherever possible.
- 7.9 Board members noted that there was the potential for delay in cases and increased costs if conflicting medical opinions were produced. It was confirmed that this could already happen under our current rules and that we would continue to work with those affected in this way to, for instance, secure a single joint opinion where possible.
- 7.10 It was proposed that the Chair would sign-off of the consultation document, and that the consultation would take place for a twelve week period, before returning to the Board for a final decision. The final rule changes would then be submitted to the Legal Services Board for approval.
- 7.11 The Board:
- a) agreed to a consultation on the proposed changes set out in this paper
 - b) agreed to the proposed approach to consultation.

NB: the paper for this item will be published at the same time as the consultation.

8 REVIEW OF MEETING AND ANY OTHER BUSINESS

- 8.1 The Chair thanked everyone for their contributions to what had been thorough and constructive discussions. The next meetings would be held on 1 March and 22 March 2022.